to settle the respective rights and obligations of employers and employees who are currently parties to seniority provisions which are similar or identical to those involved in the instant case. Failure to provide such a resolution will not only have far-reaching repercussions in labor relations, but will result in a multitude of litigation and render even more onerous the already vast difficulties present in adjusting to modern industrial necessities. Literally every employer and employee who are currently parties to collective bargaining agreements are potential litigants. The federal courts have already seen the forerunners of such litigants. On July 10, 1961, the United States District Court for the Eastern District of Michigan, Southern Division, rendered its decision in *Oddie et al. v. Ross Gear and Tool Company, Inc.*, Civil No. 21350 (not officially reported at date of writing). The case involves questions which are almost identical to those now before the Court. After noting that the Court felt "bound by the *Glidden* case" and that there was "nothing within the contract now in force to the contrary", the Court reached a like decision.

2. In holding as it does, the instant decision of the Court of Appeals is in conflict with the decisions of the United States Court of Appeals for the Fifth, Sixth and Seventh Circuits.

For many years, the several Courts of Appeals which have had occasion to consider the question have uniformly held that an individual's seniority rights derived from a collective bargaining contract do not survive either the expiration of the contract or the termination of the employment relationship unless bad faith is shown.

Thus, in *System Federation No. 59 of Railway Employees Department of AF of L v. Louisiana and A. Ry. Co.*, 119 F.

2d 509 (C. A., 5th Cir. 1941), after noting that the question before the Court was whether the seniority rights claimed arose out of and existed because of the contract in question and persisted only during its term or whether they continued to exist after it had terminated, the Court stated:

> "On this point the authorities are uniform. They settle it that collective bargaining agreements do not create a permanent status, give an indefinite tenure, or extend rights created and arising under the contract, beyond its life, when it has been terminated in accordance with its provisions. * * * The rights of the parties to work under the contract are fixed by the contract. They persist during, they end with its term. * * *
>
> "The rights accorded plaintiff and its members under the 1929 contract are clear. Under it, any of the persons named who were furloughed during its continuance had a right during the life of the contract, to apply for reinstatement under its terms. After its abrogation that right was lost and reinstatement could not be claimed under its terms, but only under the terms of the company rules."

In *Local Lodge 2040, International Ass'n of Machinists, AFL-CIO v. Servel, Inc.*, 268 F. 2d 692 (C. A., 7th Cir. 1959), cert. denied 361 U. S. 884, the collective bargaining contract, as reported in the Court's opinion, provided *inter alia:*

> "Employees, who were laid off, retained their seniority for a period of time ranging from at least 12 months to 24 months, depending upon the amount of their seniority at the time of their layoff".

Certain benefits were available to employees who had requisite seniority. Prior to the expiration of the existing collective bargaining contract, the employer discontinued its operations at the plant in question and advised the employees that their employment was permanently terminated. Thereafter, employer refused to provide the em-

ployees with any of the benefits called for by the contract. Certain named employees brought suit against the employer contending "that when the employees were permanently laid off by Servel during the course of its discontinuance of its manufacturing operations that they then achieved the status of laid-off employees with two years' seniority from the time of the layoff as provided in the agreement."

In disposing of such contentions, the Court wrote at page 698 of its Opinion:

> "Contrary to Appellant's contention we find nothing in the agreement providing for *a permanent* layoff status to those employees or giving vested rights to seniority for two years following their layoff. Seniority rights depend upon an employer-employee relationship; they do not guarantee such a relationship but merely define the rights of an employee when that status is in existence, and the right of seniority is not inconsistent with right of an employer to discharge its employee."

The importance of the instant case would be greatly lessened if the only inconsistency to be encountered was that which exists among the several Circuits of the Courts of Appeals. Of far greater significance is the fact that the instant decision is inconsistent with the basic concept of exclusive representation by a duly selected bargaining agent within a *defined bargaining unit.*

The instant decision has, without discussion of the issue, merged several separately defined bargaining units into one super unit notwithstanding the fact that, in accordance with their guaranteed right to do so, the employees in each of the bargaining units have selected different exclusive bargaining representatives. While separately defined bargaining units form the basis for the selection of each

group's exclusive bargaining representative, the instant decision holds that the functional existence of such separate bargaining units is irrelevant when determining the individual seniority rights of discharged employees. Had the employer done that which the opinion holds the employees were entitled to have done, it would have breached the contract in force with the exclusive bargaining agent of the employees at the Bethlehem plant by attempting to superimpose the terms of the Elmhurst contract on the Bethlehem workers. An employer is not free to modify the contract of one bargaining unit in order to recognize seniority rights which may be found by implication to have survived the termination of the employment relationship and the expiration of a labor contract which was formerly in force in some other bargaining unit. In short, under the rationale of the instant decision, an employer may elect to breach the implied individual rights of discharged employees or to breach the express terms of a labor agreement which is in effect with some other bargaining unit, but circumstances will not permit compliance with all of his obligations. The decision has introduced a dual standard which requires a close examination of the bargaining unit on one hand, but which totally disregards it on the other. While such a procedure might prove workable if the requisite uniformity in contracts and collective bargaining representatives were always present, it can hardly be employed if the workers in each separately defined bargaining unit are to continue to be permitted to select their own exclusive bargaining representative and to negotiate their own contract.

Inherent in the concept of an exclusive bargaining agent is the fact that certain rights of individual workers must yield to the necessities of modern collective bargaining.

Everyone concedes that such individual rights must yield if the bargaining agent modifies or eliminates them by agreement: *Elder v. New York Cent. R. Co.*, 152 F. 2d 361 (C. A., 6th Cir., 1945). It is suggested that the same reasons which require individual seniority rights to yield to freedom of bargaining dictate that they also yield to the concept of separate bargaining units and the right of each unit to select its own bargaining representative.

CONCLUSION

For the foregoing reasons, Petitioner's petition for writ of certiorari should be granted.

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Respectfully submitted,

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